

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Madam President, I believe my distinguished colleague from Alabama has some comments and questions he wishes to raise, so I ask that he be recognized.

The PRESIDING OFFICER. The Senator from Alabama.

FISA

Mr. SESSIONS. Madam President, I thank my colleague, Senator BOND, the vice chairman of the Intelligence Committee. He has been working for a full year virtually on trying to accomplish what we need to accomplish now.

I may not be able to follow the debate, but it seems to me that now we are beginning to hear that somehow despite your determined efforts and those of Senator MCCONNELL and our side of the aisle the Republicans are being accused of holding up this legislation.

Can you give us your perspective on that? I am sure it is different from what I have heard on the floor earlier on.

Mr. BOND. Madam President, to respond to my colleague, it would be a pleasure. Let's go through the record.

In April of 2007, the Director of National Intelligence, or the DNI, submitted a request to update FISA, the Foreign Intelligence Surveillance, law to Congress. The draft legislation that he sent to Congress was not a political or partisan piece of legislation, it was absolutely essential because technology has changed and the old FISA law was prohibiting our agencies from having the ability to go up on a foreign target without getting an order of the FISA Court, which totally gridlocked that court.

But what he sent up was the result of a year of negotiations and coordination among civil servants in the Department of Justice and our intelligence agencies that will actually have to implement the system the legislation will cover. So the people who are running it set up the recommendation.

Soon after that, there was a court order issued that resulted in these significant gaps. That ruling brought important parts of the system we use to monitor terrorists overseas to a halt. It created dangerous gaps in our ability to collect. The need to pass a permanent legislative fix for FISA suddenly became much more urgent, and the DNI came before the Intelligence Committee in May of 2007 to explain why it was needed and to say how urgent it was.

Mr. SESSIONS. Indeed, didn't he say it couldn't have come at a worse time to have us be denied this kind of intelligence capability?

Mr. BOND. That is correct. As the DNI explained to Congress in a closed-door briefing for all Senators in July of 2007, the FISC ruling came at a time of heightened concern in our intelligence agencies that terrorist attacks against the homelands of our allies might be in the works.

The DNI explained in that briefing in no uncertain terms the urgent need to update FISA and close the intelligence gaps caused by the ruling so that our intelligence agencies would have the tools they need to detect terrorist plots against our homeland or our troops and allies overseas.

Mr. SESSIONS. To follow up on that, you are familiar with the NSA and have seen it. Would you dispute his decision based on what you know? Didn't you also conclude, as I did, that he was exactly right; this was absolutely critical to our national defense and security?

Mr. BOND. Mr. President, yes. I learned at the time why it was so essential, and I would say there is a letter from the DNI, a classified letter, which is available in our Intelligence Committee offices or in S-407 for Senators to read that says what the intelligence community was able to accomplish after the Protect America Act was passed on August 3, 4, and 5 of last year, which would not have been possible had we not changed the FISA law. So there are clear examples set forth in a classified letter that I invite all my colleagues to review. I would be happy to have them review it.

Mr. SESSIONS. When we heard what he said, we got busy. You were one of the leaders. We worked through and passed the legislation in August, just this past August, that basically affirmed this program and kept it going. But can you tell us now why we didn't make it permanent at the time?

Mr. BOND. First, I am not a big fan of sunsets. If the Intelligence Committee does its job—and with Chairman ROCKEFELLER leading and my role in it, I can assure you that we are looking at all of these laws, all of these practices, and authorizing legislation of the intelligence community to see if it is working, to see if it is working within proper bonds. But I believe that. And I believe the Attorney General was correct when he said we should not sunset these laws because there are no sunsets on our enemies' fatwas.

That came from our Attorney General. But we did agree to a 6-month sunset because Senate Democrats assured me that 6 months was long enough to take a systematic look at the law and come up with a strong, permanent solution. They believed we needed additional protections that had not existed in the original FISA law. It did not include one of the key elements that the DNI requested in his original April 2007 request. We had to pass a shortened version because of the timeline. But given that we had that sunset, our Intelligence Committee worked very hard, after the passage of the PAA, until we were able to pass on a bipartisan basis, by 13 to 2, a strong bill that adds significant new protections for Americans and which permits the DNI to conduct the program as he thinks it needs to be conducted to assure that our country is safe.

Mr. SESSIONS. How did we get here and why do we need another 15-day ex-

tension? Why can't we get this thing done?

Mr. BOND. That is kind of an obvious question that my colleague has asked. The following month, the Judiciary Committee of the Senate put out a bill on a straight party-line vote, a partisan substitute which was drafted without getting the effective input of the intelligence community, the Department of Justice. And the DNI said it absolutely would not work, so he couldn't support it. So a month after that, on December 17, the distinguished majority leader brought the bill to the Senate floor, thought it very timely to get it done in December, since we have a February 1 expiration date. But several members of the majority party filibustered the bill or actually they phoned in their objections, their filibusters, from campaign stops. And it could not go forward. Then the Senate didn't get around to taking up FISA again until over a month later, on January 23.

We only returned to FISA after taking up the Indian health legislation. I don't diminish the importance of that measure, but it might have waited until after we finished FISA.

Mr. SESSIONS. It seems to me that our Democratic leadership has had legislation from the Director of National Intelligence since April. We have refined it, particularly your committee, the Intelligence Committee, has moved it forward on the floor. And we have just wasted a lot of time when we need to be making this permanent.

Mr. BOND. Unfortunately, my colleague from Alabama is right. I know we both don't want to engage in finger-pointing, but some of my colleagues have been making statements about our efforts on the bill, which leave me no choice but to correct the record. I invite any of my colleagues who have a different view to come discuss it with me. It is critical that we move forward.

We have a 15-day extension. At the end of 15 days, this body goes on a week's recess. There is no reason we cannot pass this bill, conference with the House, and pass it by February 15 so American citizens will have the additional protections this bill includes, and our carriers will have the liability they must have to continue to participate in the program.

I thank my colleague from Alabama.

Mr. SESSIONS. I thank Senator BOND and Senator ROCKEFELLER and the Intelligence Committee. I serve as a member of the Judiciary Committee. I strongly opposed the bill that came out of our committee. I believed your bill, the Intelligence Committee bill, which passed 13 to 2 in a bipartisan fashion out of the Intelligence Committee, was superior to the one that passed Judiciary on a narrow party-line vote. I also grasped during that debate that one of the real differences was the Intelligence Committee members knew what was at stake. That had been your responsibility, to ensure that our intelligence community was

able to function effectively. You knew how the system worked and we didn't. We allowed theoretical ideas and maybe partisan politics to interfere with a simple project which was to identify what we needed to do to fix the broken intelligence system and to do so consistent with the Constitution and liberty.

You all worked on that and reached an agreement on it. We continued to have nitpicking, complaints, ideas. Everybody has a different idea how they would like to see it done. I guess that is lawyers. Maybe that is the Judiciary Committee lawyers as opposed to Intelligence Committee members.

The way I would boil this issue down for the American people is this: We are not asking in this legislation that anything be done to diminish the great liberties we as Americans have come to cherish. Actually, all it is doing is facilitating historic concepts of intelligence surveillance that we have always done. Fundamentally, there is no dispute that American intelligence officers abroad can intercept such communications as they are able to intercept without any Federal court warrant or anything else of that nature because the Federal court does not have jurisdiction, one reason, in Europe or the Middle East or Pakistan or any other country. They just don't have jurisdiction there. So we have always known that our intelligence agencies are capable, authorized, and legally able to do this.

In the United States, however, if somebody taps your phone—and we have had so much confusion about this—if a Government agency were to tap someone's phone, they are entitled to listen not only to the calls that are placed away from that phone to someone else, they are also entitled to listen to phone calls that come into that phone number. That is part of the legal authorization to surveil inside the United States.

So the first thing you have to do is have legal authorization to surveil. Once you do, on that phone, then you can listen to the calls that come in. What we do as a matter of practicality is we mitigate if a phone call comes in on a matter unrelated to the criminal activity that is being surveilled in the United States. That is the way it is.

So what I want to say is, don't think this is somehow a retrenchment of historic American protections. What we are saying is, if you have a legal authorization to intercept a telephone system in Afghanistan—and we do, our people have a right to intercept a phone conversation—it seems to me you also have a right, just as you do if you have a warrant involving a U.S. citizen, to listen to the phone calls they place into the United States. And if it is not relevant to any kind of terrorist activity, then you would mitigate against it. But if you follow what I am saying, once you have the authority, as we do, to intercept a cell phone number somewhere, something like

that, if you have this activity and you intercept that and you can surveil that number, then you are able to surveil who they call.

If they are calling into the United States to set up a terrorist organization to carry out a plot, then that is the kind of call you want to intercept, for heaven's sake. I just don't think we have a big issue. I am proud of the committee. They have added protections, eliminated ideas that could lead to some abuse somewhere, but you have written a bill that is worthwhile.

Let me say about the people at the National Security Agency and our FBI and our other agencies that are out doing this kind of work, they follow the laws we give them. Don't think, like you see on television, on "24" and some of these things that people just go around and violate the law on a regular basis. I was a Federal prosecutor for 15 years. People don't put their careers on the line, throw away their careers, violating the law.

So we have to have a law that allows them to lawfully do their work and not deny them the right or a legitimate power to protect America because we are putting ourselves at risk, and we should not do it. So I am frustrated, forgive me, that we are so timid about allowing the full historical surveillance capabilities our Nation is used to having at this time when we have unique threats from terrorists who have proven they have the ability to inflict thousands of deaths on Americans.

Our good people are working their hearts out. Let's don't make it more difficult for them. Let's affirm what they are doing. We will continue to monitor it so it is never abused.

I thank the chairman and the Intelligence Committee for their bipartisan work to serve our country by producing a bill we all can be proud of.

I yield the floor.

The PRESIDING OFFICER (Mr. PRYOR). The Senator from Missouri.

Mr. BOND. Mr. President, I extend my most sincere thanks to my colleague from Alabama, who is a very valuable member of the Judiciary Committee. He does not let the fact that he was a lawyer and a prosecutor interfere with the exercise of good judgment. I congratulate him on his very perceptive comments. I thank him for participating with me.

I also would agree with him. He made the strong point that sensitive intelligence matters should be handled in the Intelligence Committee. Our intelligence community leaders have said it is very difficult to present matters to a committee when they have to deal in closed session on so many things. Even the things that may in themselves not be classified are often related to classified materials. So I hope maybe we can take a look at committee jurisdiction in the future.

I will take a few minutes to discuss why it is so important the Senate pass the bipartisan Rockefeller-Bond sub-

stitute amendment without adding unnecessary or harmful amendments that have not been vetted by the intelligence community.

There are some colleagues who may believe we can just keep adding amendments without causing any problem for our intelligence collectors. But the fact is, the legislation is intended, first and foremost, to keep the intelligence gaps that existed prior to the passage of the Protect America Act, or PAA, closed. If we do not check with the experts in the intelligence community about whether their proposals will enable the intelligence community to keep the gaps closed, and if we do not heed their advice, the legislation can have—and often has—unintended consequences that impede vital intelligence collection.

An example of why this is so important: There was a substitute amendment included in the Rockefeller-Bond bill that provides additional protections for Americans traveling overseas. Originally, this amendment was offered by the Senator from Oregon—a valued member of our committee. His intent—which I share, and the intelligence community shares—is to provide overseas Americans with the same level of court review and approval as Americans in the United States receive. We believe that is very important.

The amendment passed in the committee despite my vote in opposition because of the drafting that the amendment had not been vetted by the intelligence community. It turned out it would have been unworkable, causing unintended consequences, including impeding important intelligence collection on legitimate targets, if it was passed as it was.

But the chairman and I worked with Senators WYDEN and WHITEHOUSE over the past few months so we could make this functional—a well-intentioned amendment, a very valuable addition to this bill. We fixed that provision, and it is in the managers' amendment that Chairman ROCKEFELLER and I have. So we will have a workable bill, one that the DNI supports, and one we can be very proud of, because it does extend additional protections to American citizens and U.S. persons abroad.

But when we had to fix this issue, what we thought was a simple amendment took 24 pages of language to make sure we did not have unintended consequences—in an amendment that was originally only 3 pages long. I raise this not to criticize the authors of the amendment but to thank them for their cooperation.

But the basic principle is a principle of medicine, and we can apply it to the intelligence legislation: First, do no harm. I am concerned about the unwillingness of some colleagues who have proposed legislation to call the office of the DNI or NSA to make sure their amendments would do no harm. If amendments cause the intelligence gaps to reopen, the legislation will be worthless, probably will not pass, and will not be signed into law.

An example of how well a bipartisan FISA reform bill can function is the Protect America Act. I have said before that the PAA did exactly what it was intended to do: it closed the intelligence gaps that threatened the security of our Nation and our troops. It did so in a truncated fashion, but it worked for 6 months.

Now, there are some Members who criticize the PAA and call it flawed. But let there be no doubt, the PAA has been a great success. It did not open any new powers that had not existed before the technology changed and brought applications of new limitations on our collectors.

Next, I want to call attention to a letter received by the Senate Select Committee on Intelligence on January 25 from the DNI. Director McConnell wrote that the authorities provided by Congress, through the Protect America Act, passed in August of last year, have "allowed the Intelligence Community to collect vital foreign intelligence information, and made the Nation safer by enabling the IC to close gaps in our foreign intelligence collection."

Let me repeat that: It has enabled the intelligence community to close gaps in our foreign intelligence collection.

More specifically, Director McConnell said the PAA has enabled the intelligence community to obtain information related to disruption of planned terrorist attacks against Americans, efforts by an individual to become a suicide operative, instructions to a foreign terrorist associate about entering the United States, efforts by terrorists to obtain guns and ammunition, terrorist facilitator plans to travel to Europe, information on money transfers; plans for future terrorist attacks, and movements of key extremist groups to evade arrest—among others.

While I cannot say anything more publicly about these examples, I can say these are examples of how the PAA disrupted ongoing and planned attacks against our interests, our allies, and our citizens. The Director did send the committee a classified letter laying out the details of these disruptions. He also gave examples of how collection—that had faltered because of a FISA Court decision in the spring—was renewed under the PAA. As a result, key intelligence against terrorists was collected.

I have reviewed the letter. I think any of our colleagues interested in this subject should go to the Senate Intelligence Committee offices or to S-407 to read the classified letter for themselves to see how the PAA has helped save American lives.

Director McConnell has told us some targets might not have been pursued without the PAA because of the administrative, analytic, and legal burden of seeking FISA orders. Keep in mind, these orders would have been FISA orders to collect information on foreigners, not Americans.

It is clear from my reading of Director McConnell's letter that most of the

successes he identified would not have occurred had it not been for the PAA.

While the PAA has been key to gathering unique and vital intelligence information, Director McConnell does not support its extension. The reason he does not support the renewal—one that has been critical to enabling the intelligence community he leads to do its job—is because it does not include retroactive civil liability protection. In his letter, and on numerous occasions—and in every substantive discussion I have had with him—the Director has said that we cannot gather this kind of information in sensitive intelligence areas without the cooperation of private parties.

Despite the success of the intelligence community's ability to collect intelligence under the PAA, Director McConnell does not support its extension without this retroactive civil liability provision because he believes the voluntary cooperation of private parties is necessary to the success of the program. I have stated previously in answers to questions of my colleagues precisely why it would work. By implication, it seems he is concerned, wisely, I believe, that carriers will no longer cooperate with the Government if they fear being dragged into expensive lawsuits.

Again, for all these reasons, we must pass and get the bill out of here—I hope at least by early next week—and pass a conference report before February 15. The Rockefeller-Bond substitute is that bill.

A lot of questions have been asked about when we are going to move forward. We have exchanged papers back and forth. Chairman ROCKEFELLER's staff and my staff have negotiated extensively. We need to get the concurrence of the leaders on both sides. I hope we are close to getting a workable framework. This is such a critical piece of legislation. I do not want to hold it up any longer.

I know my colleagues have been waiting for votes. Nobody has been more anxious than Chairman ROCKEFELLER and I. We understand how important this issue is. We hope to give this body some real action on moving the bill forward sooner rather than later. We will need the leaders, who will make the decisions. We will need the cooperation of all colleagues on both sides. Let's hope we can come to a successful resolution.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF BUSINESS

Mr. REID. Mr. President, there will be no rollcall votes tonight. We will see

what we can do tomorrow to come to some conclusion on the stimulus package, at least get on the road to how we are going to have some votes. And we will have some votes; it is just a question of when we will have them.

On FISA, we thought we had it worked out a few minutes ago, but it came "unworked." So we are going to continue to see what we can do. I have told Senator MCCONNELL we are doing our very best to wrap that up so we can have agreement. But an agreement is two sided. It is not just us. We think we have a way to complete that so we can finish our work on it, but it is a work in progress. I thought we had it done a few minutes ago, but it didn't work out that way. So we will see what we can do tomorrow on these issues, but there will be no votes tonight.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BAUCUS. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Ms. CANTWELL.) Without objection, it is so ordered.

ECONOMIC STIMULUS

Mr. BAUCUS. Madam President, the psalmist prayed:

Do not cast me off when I am old. Do not forsake me when my strength fails.

That is really the question before us as we get to the economic stimulus bill, which is the bill that is going to send out rebate checks to Americans: Will the Senate cast off 20 million seniors? Will the Senate forsake 20 million of the neediest Americans?

A vote for the Finance Committee substitute is a vote for 20 million American senior citizens who have worked hard all their lives, who have paid taxes for a lifetime. They contribute to the economy today. But the underlying House-passed bill would not give them a rebate check.

The House-passed bill says no to 20 million American seniors. The House bill gives checks only to the more affluent seniors whose incomes are high enough that they pay taxes now. The House-passed bill would not give a stimulus check to seniors who are scraping by on Social Security income alone and have no tax liability. To state it differently, the House-passed bill says no to the most neediest seniors, not only 20 million American seniors, but the House bill says no to the 20 million American seniors who happen to be the most needy. These 20 million seniors have given a lifetime of labor. They have given a lifetime of service, and they have paid a lifetime of taxes. The House-passed bill would not give them a stimulus check.

Think of a grandmother who needs money for food, medicine. America's economy is slowing down. Times are